

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Auction of Local Multipoint Distribution Service (LMDS))
)
)
Minimum Opening Bids or)
Reserve Prices)
)

ORDER

Adopted: January 14, 1998

Released: January 14, 1998

By the Chief, Wireless Telecommunications Bureau:

Introduction

1. By this Order, the Wireless Telecommunications Bureau ("Bureau") establishes minimum opening bid requirements for the auction of 986 Local Multipoint Distribution Service (LMDS) licenses set to begin February 18, 1998. The Balanced Budget Act of 1997 creates a presumption that the use of minimum opening bids or reserve prices is in the public interest in FCC auctions unless the Commission determines otherwise. Commenters have failed to persuade us that the use of minimum opening bids or reserve prices is contrary to the public interest in this instance. Accordingly, as explained below, the Bureau adopts minimum opening bids, subject to reduction, and establishes a formula for calculating the minimum opening bids.

Background

2. The Balanced Budget Act of 1997 directs the Commission to prescribe methods to establish reasonable reserve prices or minimum opening bids for licenses subject to auction, unless the Commission determines that such reserve prices or minimum opening bids are not in the public interest.¹ On October 17, 1997, the Bureau sought comment by Public Notice regarding the

¹ The Balanced Budget Act of 1997, Pub. Law 105-33, 111 Stat. 251 (August 5, 1997)("Budget Act"), directs the Commission, in pertinent part, to "prescribe methods by which a reasonable reserve price will be required, or a minimum bid established, to obtain any license or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest." *Codified at* 47 U.S.C. § 309(j)(4)(F). Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a

establishment of reserve prices or minimum opening bids.² The Bureau received 23 comments and 4 reply comments.³

3. In the October 17 Public Notice, the Bureau proposed to establish minimum opening bids for the LMDS auction and retain discretion to lower the minimum opening bids. The October 17 Public Notice stated our belief that minimum opening bids were more appropriate for LMDS than reserve prices. A minimum opening bid, we noted, can be an effective bidding tool that regulates the pace of the auction and provides flexibility.

4. In the October 17 Public Notice, we proposed the following formula for calculating minimum opening bids for the LMDS auction:

<u>Population of license area</u>	<u>A Block Min. Opening Bid</u>	<u>B Block Min. Opening Bid</u>
Less than 100,000	\$0.75 x population	10% of A Block
100,000 - 1,000,000	\$1.50 x population	10% of A Block
More than 1,000,000	\$2.25 x population	10% of A Block

We sought comment on this proposal. We also asked that commenters who believed that the proposed formula would result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, explain why this is so, and comment on the desirability of an alternative approach. Commenters were advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Alternatively, we sought comment on whether, consistent with the Balanced Budget Act, the public interest dictates having no minimum opening bid or reserve price.

5. *Comments.* Most commenters favor reducible minimum opening bids over reserve prices.⁴ Commenters in favor of minimum opening bids believe they have the ability to greatly

minimum opening bid and/or reserve price prior to the start of each auction. *See* In the Matter of Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, FCC 97-413, *Third Report and Order and Second Further Notice of Proposed Rule Making* (rel. December 31, 1997) at ¶ 141 ("Part 1 Third Report and Order").

² *Public Notice*, "Comments Sought on Reserve Prices or Minimum Opening Bids for LMDS Auction," DA 97-2224 (rel. October 17, 1997) ("October 17 Public Notice"). *See also*, *Public Notice*, "Opportunity for Reply Comment on Reserve Prices or Minimum Opening Bids for LMDS Auction Extended," DA 97-2420 (rel. November 18, 1997).

³ *See* Appendix A, which identifies all the commenters.

⁴ US Wireless Comments at 4, Tel/Logic Comments at 2, Vanguard Comments at 2, NACELL Comments at 2, WaveLink Comments at 2, WebCel Reply Comments at 1.

speed the auction,⁵ ensure the licenses are not dramatically undervalued,⁶ deter frivolous bidders,⁷ ensure fair recovery for the public,⁸ and provide immediate feedback on appropriateness of the floor price set as opposed to a reserve price.⁹ Several commenters cite the importance of being able to reduce the amount of the minimum opening bid to guard against the risk of setting the opening bid too high, as spectrum valuation is very difficult.¹⁰

6. Those commenters who oppose minimum opening bids do so for a variety of reasons. Several allege that minimum opening bids will work against an open market concept.¹¹ Bosch argues that they will work against broad participation,¹² and Wavelink asserts that they are not needed because this auction will be competitive.¹³ Some commenters oppose minimum opening bids for certain markets by asserting, for example, that they are not appropriate for Basic Trading Areas (BTAs) with population density under 75 persons per square mile,¹⁴ or that they are not appropriate for anything below the top 100 markets.¹⁵ Commenters also allege that there is a risk that they may be set above fair market value and delay service to the public,¹⁶ and they will hurt small businesses.¹⁷ Finally, many commenters opposing minimum opening bids argue that they cannot be appropriately set because valuation is very difficult due to geography, complexity of

⁵ Spectraware Comments at 2, Vanguard Comments at 2, Tel/Logic Comments at 4, WebCel Reply Comments at 1.

⁶ WinStar Comments at 3, Tel/Logic Comments at 4.

⁷ Vanguard Comments at 2, WebCel Reply Comments at 1.

⁸ Vanguard Comments at 2.

⁹ WebCel Reply Comments at 1.

¹⁰ Spectraware Comments at 2, US Wireless Comments at 4, HSC Comments at 6.

¹¹ Vega Comments at 1, VIPC Comments at 1, MWI Comments at 4, Cornerstone Comments at 1, NACELL Comments at 1, WaveLink Comments at 4, Bosch Reply Comments at 2.

¹² Bosch Reply Comments at 2.

¹³ WaveLink Comments at 3.

¹⁴ Midwest Comments at 2, NTCA Reply Comments at 4.

¹⁵ Horizon Comments at 1.

¹⁶ Midwest Comments at 2, HSC Comments at 5, NACELL Comments at 2.

¹⁷ US Wireless Comments at 5, Vega Comments at 2, MWI Comments at 2, Cornerstone Comments at 1, WaveLink Comments at 6, Bosch Reply Comments at 3, MEWD Reply Comments at 3.

service and propagation, and lack of existing systems.¹⁸

7. Many commenters state, however, that if minimum opening bids are adopted, they should be lower than those proposed.¹⁹ Commenters offer several alternatives, including: setting them equal to the upfront payment;²⁰ setting them at one-third of the upfront payment;²¹ establishing no minimum bid on markets with fewer than 50 persons per square mile;²² establishing a ceiling for the minimum opening bids at \$0.40 per pop;²³ adding a fourth tier and using a lower value;²⁴ setting a single dollar amount minimum opening bid for each tier;²⁵ and finally, if population density is under 25 persons per square mile, set the minimum opening bid at 25 percent of the comparable opening bid of places with higher density population.²⁶ Spectraware also offers a proposal for reducing the minimum opening bid during the course of the auction.²⁷

8. Several commenters argue that minimum opening bids or reserve prices in LMDS are

¹⁸ HSC Comments at 5, JATO Comments at 2, Mitts and Pappas Comments at 3, Virginia Tech Comments at 1, NACELL Comments at 4, Zip Comments at 3, Spectraware Comments at 2, Eclipse Comments at 2, Bosch Reply Comments at 2.

¹⁹ US Wireless Comments at 4, HSC Comments at 5, MWI Comments at 1, Eclipse Comments at 1, Virginia Tech Comments at 1, NACELL Comments at 2, Zip Comments at 1, Bosch Reply Comments at 2, MEWD Reply Comments at 3, JATO Comments at 2, Tel/Logic Comments at 4, Spectraware Comments at 2, WaveLink Comments at 5.

²⁰ EATEL Comments at 1, Tel/Logic Comments at 2, HSC Comments at 6, JATO Comments at 1, Cornerstone Comments at 1, Zip Comments at 1, Bosch Reply Comments at 2, US Wireless Comments at 4.

²¹ Tel/Logic Comments at 5.

²² PTA Comments at 2.

²³ Virginia Tech Comments at 2.

²⁴ Eclipse Comments at 3 (proposes setting the tiers at tier 1: 0-100,000 @ \$.25 x pops; tier 2: 100,000-250,000 @ \$.50 x pops; tier 3: 250,000-1,000,000 @ \$1 x pops; tier 4: 1,000,000+ @ \$2 x pops.)

²⁵ NACELL Comments at 5 (proposes setting tier 1: 0-100,000 @ \$25,000; tier 2: 100,000-1,000,000 @ \$50,000; tier 3: 1,000,000+ @ \$100,000.)

²⁶ Fremont Comments at 1.

²⁷ Spectraware Comments at 2.

not in the public interest because they don't foster competition,²⁸ will be arbitrary,²⁹ will require a delay in the auction per the Budget Act, will result in a substantial number of unsold licenses, will harm the ability of small businesses to participate and delay, or eliminate LMDS in rural areas.³⁰ WebCel, however, argues that minimum bids are in the public interest because they will ensure that only serious parties participate, deter speculators, and have the potential to speed the auction by eliminating "low ball" speculation.³¹

Discussion

9. We adopt minimum opening bids for the LMDS auction that are reducible at the discretion of the Bureau. The levels will be set as follows:

<u>Population of the license area</u>	<u>A Block Min. Opening Bid</u>	<u>B Block Min. Opening Bid</u>
Less than 100,000	\$0.50 x population	10% of A Block
100,000 - 1,000,000	\$1.00 x population	10% of A Block
More than 1,000,000	\$2.25 x population	10% of A Block

10. As was the case in prescribing minimum opening bids in the auction of the upper channels in the 800 MHz SMR service, Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest.³² The Bureau is not persuaded by commenters' assertions that minimum opening bids for LMDS do not fulfill the public interest objectives set forth in Section 309(j) of the Communications Act of 1934, as amended.³³ We reject commenters' arguments that the use of minimum opening bids works against an open market concept.³⁴ The use of competitive bidding implements the principle that the marketplace should determine the value of this spectrum. The

²⁸ EATEL Comments at 2 .

²⁹ Mitts and Pappas Comments at 2 .

³⁰ Horizon Comments at 1, WaveLink Comments at 4, NTCA Reply Comments at 2.

³¹ WebCel Reply Comments at 1-2.

³² Section 3002(F) of the Budget Act directs the Commission to "prescribe methods by which a reasonable reserve price will be required, or a minimum bid established, to obtain any license or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest."

³³ 47 U.S.C. § 309(j)

³⁴ Vega Comments at 1, VIPC Comments at 1, MWI Comments at 4, Cornerstone Comments at 1, NACELL Comments at 1, WaveLink Comments at 4, Bosch Reply Comments at 2.

use of a minimum opening bid does not undermine that principle. As commenters have suggested, minimum opening bids can help speed the auction process and ensure that licenses are not dramatically undervalued.³⁵ Further, these goals are fully consistent with the public interest goals set forth in the Communications Act. We do agree with commenters that setting the level of the minimum opening bids is a very difficult task, especially in the case of LMDS where geography and climate may have a significant effect on propagation.³⁶ To address this concern, the minimum opening bids adopted here are reducible. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid.

11. We conclude that the revised formula presented here best meets the objectives of our auction authority in establishing a reasonable minimum opening bid. We have noted in the past that the reserve price and minimum opening bid provision is not a requirement to *maximize* auction revenue, but rather a protection against assigning licenses at unacceptably low prices and in noncompetitive markets, and that we must balance the revenue raising objective against our other public interest objectives in setting the minimum bid level.³⁷ In doing so, we have recognized the special characteristics of LMDS services, especially in small and less dense markets and, accordingly, have reduced the minimum opening bid from what was proposed for the lower two tiers. Minimum opening bids for the two lower tiers that are less than those proposed will, we believe, assist small businesses and facilitate service for rural and other sparsely populated areas. The revised minimum opening bid levels for licenses in the two tiers with populations below 1,000,000 will balance the objective of providing a fair return for the public while still encouraging broad participation and avoiding a delay of service to smaller markets.

12. Accordingly, IT IS ORDERED that, under the authority contained in Sections 0.131(c), 0.331 and 1.2104 of the Commission's Rules, 47 C.F.R. §§ 0.131(c), 0.331, and 1.2104, and pursuant to the authority of Sections 4(i), 303(r), 309(j), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 332(a), minimum opening bids subject to reduction are established for this auction as specified in this Order.

³⁵ Spectraware Comments at 3, Vanguard Comments at 2, Tel/Logic Comments at 4, WebCel Reply Comments at 1, WinStar Comments at 3.

³⁶ See, e.g., HSC Comments at 5, JATO Comments at 2, Mitts and Pappas Comments at 3, Virginia Tech Comments at 1, NACELL Comments at 4.

³⁷ *Auction of 800 MHz SMR Upper 10 MHz Band Minimum Opening Bids or Reserve Prices* DA 97-2147, (rel. October 6, 1997)

13. IT IS FURTHER ORDERED that the amount of the minimum opening bid for each auctionable license is set pursuant to the formula adopted in this Order and specified for each license in Appendix B to this Order.

FEDERAL COMMUNICATIONS COMMISSION

Daniel Phythyon
Chief, Wireless Telecommunications Bureau

APPENDIX ACommenters

BroadBand, Inc. (BroadBand)
Cornerstone Wireless Communications, L.L.C. (Cornerstone)
East Ascension Telephone Company, Inc. (EATEL)
Eclipse Communications Corporation (Eclipse)
Fremont Telcom Co. (Fremont)
HighSpeed.Com, L.L.C. (HSC)
Horizon Personal Communications, Inc. (Horizon)
JATO Communications Corp. (JATO)
Midwest Wireless Communications, L.L.C. (Midwest)
Montana Wireless, Inc. (MWI)
North Alabama Cellular, LLC (NACELL)
Pioneer Telephone Association, Inc. (PTA)
Richard L. Vega Group, Inc. (Vega)
Spectraware Corporation (Spectraware)
Tel/Logic Inc. (Tel/Logic)
Thomas F. Mitts and Pappas Telecasting Companies (Mitts and Pappas)
U.S. WaveLink Telecommunications, L.P. (WaveLink)
U.S. Wireless Communications, Inc. (U.S. Wireless)
Vanguard Cellular Systems, Inc. (Vanguard)
VIPC (VIPC)
Virginia Tech Foundation, Inc. (Virginia Tech)
WinStar Communications, Inc. (WinStar)
Zip Communications Corporation (Zip)

Reply Commenters

Bosch Telecom, Inc. (Bosch)
Marshfield Electric and Water Department (MEWD)
National Telephone Cooperative Association (NTCA)
Webcel Communications, Inc. (WebCel)